

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

THE FRESH MARKET, INC.,)
)
)
Plaintiff)
)
)
v.) **No. 3:04cv0770 AS**
)
)
MARSH SUPERMARKETS, INC., and)
TRADEMARK HOLDINGS, INC.,)
)
Defendants)

MEMORANDUM OPINION AND ORDER

This court takes full judicial notice of the record in this case and especially the massive part of that record that occurred when the matter was before The Honorable Christopher A. Nuechterlein, United States Magistrate Judge. This court is all too aware of the de novo nature of this review and is keenly aware that this court is not to simply rubber stamp the actions of the magistrate judge. It is also apparent from the record that the lawyers in this case for the parties have indeed been playing a tough game of litigation hard ball and much of it might be described as a scorched earth policy. The focus should not really move from the essential here. These proceedings are about a preliminary injunction and the denial of the same. A good object lesson in all of this may be found in *Eco Manufacturing LLC v. Honeywell*, 295 F.Supp. 2d 854 (S.D. Ind. 2003), *aff'd*, 357 F.3d 649 (7th Cir. 2003). A sub issue here is the likelihood of confusion. *See CAE, Inc. v. Clean Air Engineering, Inc.*, 267 F.3d 660 (7th Cir. 2001).

The Report and Recommendation of the magistrate judge filed October 17, 2005 parses the relevant authorities in this circuit and elsewhere quite adequately. This court will not attempt to improve on the magistrate judge's scholarship. Of some considerable moment is the recent decision of the Supreme Court of the United States in *KP Permanent Makeup Inc. v. Lasting Impressions, Inc.*, 125 S.Ct. 542 (2004). This court understands fully the obvious frustration of the magistrate judge in trying to bring this enormous evidentiary record to a conclusion by setting a cutoff date on September 29, 2005. No criticism of that decision is here intended. This court is also well aware that the decision in this matter regarding the preliminary injunction may be immediately appealable. So that the parties and their counsel will know precisely where they stand in regard to the preliminary injunction, this court now **APPROVES** the aforesaid Report and Recommendation with regard to the denial of a preliminary injunction, and now **ORDERS** that such denial be made a specific and official ruling of this court by a judge under Article III of the Constitution of the United States. Such is **SO ORDERED**.

DATED: January 4, 2006

S/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT

cc: The Honorable Christopher A. Nuechterlein